

Court of Appeals, State of Michigan

ORDER

People of MI v David Alan Walters

Docket No. 289444

LC No. 92-046407-FC

Patrick M. Meter
Presiding Judge

E. Thomas Fitzgerald

Kirsten Frank Kelly
Judges

The Court, acting under MCR 7.203(F)(2), orders that the motion for reconsideration is DENIED. This Court correctly held in its January 29, 2009 order that appellant is barred by MCR 6.502(G)(1) from appealing the January 2, 2008 order denying a successive motion for relief from judgment and that the exception provided by MCR 6.502(G)(2) for such a successive motion based on a retroactive change in law is inapplicable. In particular, this Court was correct in holding that the United States district court decision relied on by appellant cannot constitute a retroactive change in law because such a lower federal court decision is not binding on Michigan courts. *Greater Bible Way Temple v City of Jackson*, 478 Mich 373, 396; 733 NW2d 734 (2007). Further, appellant characterizes that federal district court decision, *Gonzales v Phillips*, 195 F Supp 2d 893 (ED Mich, 2001), as involving a straightforward and simple application of *Davis v Alaska*, 415 US 308; 94 S Ct 1105; 39 L Ed 2d 347 (1974). However, accepting this assertion would itself defeat appellant's claim that *Gonzales* constituted a retroactive change in law. It is also immaterial that neither the circuit court nor appellee appear to have relied below on the general bar of MCR 6.502(G)(1) against consideration of a successive motion for relief from judgment because a court must take notice when it lacks subject-matter jurisdiction regardless of whether the parties have raised the issue. *Lotel, Inc v Pub Service Comm*, 255 Mich App 454, 457; 660 NW2d 777 (2003).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 25 2009
Date

Sandra Schultz Mengel
Chief Clerk